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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Mines, Minerals and Energy
<b>Virginia Administrative Code (VAC) citation</b>	4 VAC 25 - 130
<b>Regulation title</b>	Virginia Coal Surface Mining Reclamation Regulations
<b>Action title</b>	Amendments regarding review of decisions not to inspect or enforce and consistency with federal regulations on topsoil standards, revegetation standards, and water diversion design.
<b>Document preparation date</b>	April 6, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

Amendments to 4VAC25-130-816.22, 4VAC25-130-816.116, 4VAC25-130-817.22, and 4VAC 25-130-817.116 are made to be consistent with applicable federal amendments regarding redistribution of topsoil and topsoil substitutes, and measuring success of revegetation. The Federal Office of Surface Mining amended its rules effective August 30, 2006 (30CFR Parts 816 and 817; Fed. Register Vol. 71, No. 168, p. 51684 through p. 51706). As provided by 4VAC25-130-700.2 of the Virginia Coal Surface Mining Reclamation Regulation, *“These regulations are promulgated pursuant to Chapter 19, Title 45.1 of the Code of Virginia (1950) as amended. In order for these regulations to receive approval by the United States Secretary of the Interior as part of the Commonwealth's permanent regulatory program, the Federal Surface Mining Control and Reclamation Act requires that these regulations be consistent with (as effective as) applicable regulations issued by the Secretary, contained in 30 CFR Chapter VII.”*

Sections 4VAC25-130-816.43 and 817.43 are being amended to allow the approval of natural stream restoration channel design, as approved by the U.S. Army Corps of Engineers. This will

allow the restoration of an impacted stream channel to one that is more natural and environmentally sound.

Section 4VAC25-130-842.15 is being amended to provide a deadline for filing applications for review and requests for hearing on decisions not to inspect and enforce, and to address such requests to the Director of the Division of Mined Land Reclamation. This will make the section consistent with other parts of the regulation and with the Virginia Surface Mining Control and Reclamation Act (Chapter 19 of Title 45.1, Code of Virginia).

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority found in § 45.1-161.3, Powers of the Department, § 45.1-230, Authority and duties of Director, and § 45.1-242, Performance standards.

- Section 45.1-161.3 empowers DMME, with the approval of the Director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.
- Section 45.1-230 of the Code of Virginia empowers the DMME Director to promulgate regulations as may be necessary to carry out the provisions of the Virginia Coal Surface Mining Control and Reclamation Act, chapter 19 of Title 45.1 of the Code.
- Section 45.1-242 of the Code of Virginia directs the DMME Director to, by regulation, establish performance standards applicable to all surface mining and reclamation operations. Establishment of these performance standards by regulation is mandatory.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

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The Department of Mines, Minerals and Energy is proposing amendments to sections of 4VAC25-130 Coal Surface Mining Reclamation Regulations as described in the following table.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-130-816.22(d)(1)	N/A	Topsoil shall be redistributed in approximately uniform thickness.	<p>Revise to allow the use of topsoil substitutes and variation of soil thickness, dependent on a permit’s approved reclamation plan.</p> <p>This change in the Virginia regulation will ensure it is consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; Fed. Register Vol. 71, No. 168, p. 51684 through 51706, which became final on August 30, 2006.</p>
4VAC25-130-816.43(a)(4) & (a)(5)	N/A	Stream channels shall be reconstructed in accordance with the specific requirements set forth in this rule.	<p>Revise and amend subpart (a)(4) and delete (a)(5).</p> <p>This change in the Virginia regulation will allow the approval of natural stream restoration channel design approved by the U.S. Army Corps of Engineers.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-130-816.116(a)(2)	N/A	Revegetation at 90 percent of the success standard is considered equal to the success standard. Sampling techniques for determining revegetation success require a 90 percent statistical confidence interval.	<p>Revise to establish a ground cover of not less than 70 percent of the success standard, which will enhance the establishment and growth of woody plants.</p> <p>This change in the Virginia regulation will ensure it is consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; Fed. Register Vol. 71, No. 168, p. 51684 through 51706, which became final on August 30, 2006.</p>
4VAC25-130-817.22(d)(1)	N/A	Topsoil shall be redistributed in approximately uniform thickness.	<p>Revise to allow the use of topsoil substitutes and variation of soil thickness, dependent on a permit's approved reclamation plan.</p> <p>This change in the Virginia regulation will ensure it is consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; Fed. Register Vol. 71, No. 168, p. 51684 through 51706, which became final on August 30, 2006.</p>

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4VAC25-130-817.43(a)(4) & (a)(5)	N/A	Stream channels shall be reconstructed in accordance with the specific requirements set forth in this rule.	<p>Revise and amend subpart (a)(4) and delete (a)(5).</p> <p>This change in the Virginia regulation will allow the approval of natural stream restoration channel design approved by the U.S. Army Corps of Engineers.</p>
4VAC25-130-817.116(a)(2)	N/A	Revegetation at 90 percent of the success standard is considered equal to the success standard. Sampling techniques for determining revegetation success require a 90 percent statistical confidence interval.	<p>Revise to establish a ground cover of not less than 70 percent of the success standard, which will enhance the establishment and growth of woody plants.</p> <p>This change in the Virginia regulation will ensure it is consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; Fed. Register Vol. 71, No. 168, p. 51684 through 51706, which became final on August 30, 2006.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-130-842.15(d)	N/A	Persons requesting review of a decision not to inspect or enforce must file an application for review and request for hearing.	<p>Revise to include a 30-day deadline for filing applications for review and requests for hearing, and to address such requests to the Director of the Division of Mined Land Reclamation.</p> <p>The change will ensure that this section is consistent with time limits to request formal administrative review of agency decisions in other sections of the regulation (e.g., 4VAC25-130-775.11) and under the Virginia Surface Mining Control and Reclamation Act.</p>

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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Sections dealing with topsoil redistribution and revegetation standards of success are being amended to assure consistency with federal regulations. No other alternative would meet the requirement that Virginia’s regulations are as effective as, but no more restrictive than, the related federal regulations. The section dealing with review of decisions not to inspect or enforce is being amended to provide consistency with the Virginia Surface Mining Control and Reclamation Act and consistency within the Virginia Coal Surface Mining Reclamation Regulations. The alternative of taking no action would result in a regulatory program that is inconsistent with federal regulations and the Code of Virginia, and is internally inconsistent.

**Family impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

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These regulatory changes are designed to provide current information regarding the topsoil redistribution and revegetation standards of success and to allow natural stream channel restoration design. They are intended to improve the quality of reclaimed mined land in Virginia. It is anticipated that they will have no impact on the institution of the family and family stability.